

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7077

Joint Petition of all Vermont affiliates of Adelphia)
Communications Corporation and Time Warner)
Cable Inc. for: (1) consent to sell substantially all)
of Adelphia's Vermont assets to Cable Holdco)
Exchange III LLC; (2) approval of such affiliates')
abandonment of cable television service in)
Vermont; and (3) revocation of the affiliates')
Certificates of Public Good; **AND Joint Petition**)
of Time Warner Cable Inc. and Cable Holdco)
Exchange III LLC for a Certificate of Public Good)
for Cable Holdco to own and operate said cable)
television systems; **AND Joint Petition** of Time)
Warner Cable Inc. and Comcast of Georgia, Inc.)
for authority to acquire control of Cable Holdco)
Exchange III LLC.)

**DIRECT TESTIMONY
OF
LAWRENCE LACKEY
ON BEHALF OF THE
VERMONT DEPARTMENT OF PUBLIC SERVICE**

SEPTEMBER 2, 2005

PUBLIC VERSION

Summary: Mr. Lackey addresses the structure of the proposed transaction, the adequacy and quality of the cable systems Comcast will operate, all issues related to line extensions, and all issues related to Public, Educational and Government (PEG) Access.

Prefiled Direct Testimony
of
Lawrence Lackey

1 Q. Please state your name, occupation and business address.

2 A. My name is Lawrence Lackey. I am a self-employed consultant. My business
3 address is 2359 Stowe Hollow Road, Stowe, Vermont 05672.

4

5 Q. On whose behalf are you testifying in this investigation?

6 A. I am testifying on behalf of the Vermont Department of Public Service (“the
7 Department”).

8 Q. Please describe your prior employment that relates to regulatory policy, service rates and
9 the telecommunications and cable industry.

10 A. I was hired by the Department in 1989, and worked in various rate, economic,
11 financial and policy analysis positions until leaving the Department to take a Utilities
12 Analyst position with the Vermont Public Service Board (“Board”) in the Summer of
13 1998. I returned to the Department in September 2001 as Director for
14 Telecommunications, and served in that position through May 2005.

15 Q. In what ways did your responsibilities, while in the employment of the Department or

1 Board, encompass cable television policy and regulation?

2 A. From September 2001 through May 2005, I was the Department's Director for
3 Telecommunications. My responsibilities in that position included policy development
4 and public advocacy on all matters before the Board concerning the telecommunications
5 and cable television service. In particular, my responsibilities included review,
6 negotiation and consumer advocacy concerning cable franchise renewals, formal
7 compliance proceedings before the Board, review of various compliance filings by cable
8 operators, and on-going informal consultation and problem resolution with cable
9 operators on interpretation of and compliance with PSB rules and CPG conditions. I was
10 also involved in the multi-party collaboration that culminated with the Board's recent
11 revision to PSB Rule 8.400, that concerns public access.

12 Q. Has your work in the area of cable television regulation continued, subsequent to your
13 departure from the Department?

14 A. Yes, it has. Subsequent to May 2005, I have continued to work, under contract to
15 the Department, on one cable television franchising investigation that was underway at
16 the time – that being the Board's consideration in Docket 7044 of the City of Burlington's
17 petition for authority to offer cable television service, as well as on this investigation.

18 Q. Just as a frame of reference for your regulatory interaction with Adelphia, what was the
19 state of affairs when you assumed your responsibilities as Director for

1 Telecommunications at the Department?

2 A. When I returned to the Department as Director for Telecommunications, the
3 Board's final order(s) in Docket 6101/6223, issuing certificates of public good ("CPGs")
4 to Adelphia Communications Corporation ("Adelphia")¹ affiliates Mountain Cable
5 Company and Better TV of Bennington, were less than a year old. The Board had
6 recently concluded Docket 6445, in which it prescribed more accurate house-count survey
7 procedures for Adelphia and accepted Adelphia's commitment to build all newly-
8 identified line extensions within 22 months. Adelphia had hired a Vermont regulatory
9 affairs manager, and not yet entered bankruptcy.

10 Q. So, during your tenure as Telecom Director, with what cable matters were you involved?

11 A. Many related to Adelphia. In addition to investigations, Adelphia frequently
12 sought my advice concerning numerous subjects prior to changing business practices or
13 service offers, or prior to filing various reports, requests and tariff revisions with the
14 Board.. Many of the discussions centered on assuring Adelphia's compliance with and
15 interpretation of CPG conditions, Board orders, and Board administrative rules as the
16 company made various changes to policies, procedures and services. In addition, during
17 that the time, the Board investigated (but ultimately did not resolve) the proper regulatory

¹ The term "Adelphia", in this testimony, when referring to the overall transactions, is intended to refer to Adelphia Communications or the assets it will sell. When referring to Vermont assets or operations, the term "Adelphia" is generally intended to encompass the Vermont operations of the Adelphia operating subsidiaries that do business in Vermont.

1 classification of cable-based high-speed Internet access service (Docket 6395). The
2 Board rejected Adelphia's petition for modification of line extension and system upgrade
3 requirements in Docket 6778. In Docket 6877, the Board investigated and accepted a
4 settlement agreement between the Adelphia and the Department that restructured the
5 schedule of completion of the "Docket 6445 line extensions"), established a substantial
6 construction performance bond for those same extensions, and substituted more specific
7 public access obligations for the set-aside of bandwidth for public access use previously
8 ordered.

9 Other cable companies required attention during that period, as well. The Board
10 revoked the CPG of a small cable company (Gateway Cablevision), renewed the CPGs of
11 several small cable companies (e.g. White Mountain Cable), granted a CPG to a non-
12 incumbent cable operator for an cable system overbuild (Duncan Cable for the area
13 served by Opticable), and consented to several cable system sales or transfers of control
14 (e.g. the Opticable sale to Southern Vermont Cable Company). I coordinated the
15 Department's negotiation of a renewed franchise for Vermont's second largest cable
16 operator – Helicon d/b/a Charter Communications; the Board accepted the CPG
17 conditions negotiated and jointly proposed. Finally, and most recently, I testified on
18 behalf of the Department in Docket 7044 concerning the City of Burlington's cable
19 franchise request.

20 In addition, I participated in the collaborative effort to update the PSB Rule 8.000,
21 which is the Board's generic administrative rule concerning public access and other

1 topics particular to cable television service.

2 Q. Have you testified before the Vermont Public Service Board (“Board”) previously,
3 including matters not related to Adelphia or cable television service?

4 A. Yes, I have. A complete list of my other prefiled testimony and appearances
5 before the Board are attached to this testimony as Exhibit DPS-LFL-1.

6 Q. Are other witnesses testifying on behalf of the Department in this matter?

7 A. Yes, several people are testifying on behalf of the Department in this matter. The
8 prefiled testimony of Deena Frankel describes the topics that each witness is addressing,
9 and offers the Department’s overall recommendation concerning the petitions. The
10 Department’s testimony is organized, generally, to follow the statutory criteria applicable
11 to review of the instant petitions – 30 V.S.A. § 504 and Board Rule 8.214(B). Ms.
12 Frankel’s Exhibit DPS-DLF-1 lists the relevant statutory criteria and identifies the
13 Department witness who addresses each criterion.

14 Q. What topics do you address in this prefiled testimony?

15 A. There are several petitioners in this matter, and several approvals or consents
16 sought for several transactions. In general terms, the transactions – if approved by the
17 Board and other regulator bodies and consummated by the petitioners – would result in
18 the sale of the assets that comprise Adelphia Communications’ Vermont cable systems to

1 a new corporate entity wholly owned by Comcast. I will address the particular elements
2 of the transaction later in this testimony.

3 My testimony evaluates the proposed transactions relative to several of the
4 specific EMCO and statutory review criteria that relate to system construction and build-
5 out:

- 6 • EMCO 3: the commitment to a construction and in-service schedule.
- 7 • EMCO 8: the quality of the engineering and materials used in the system.
- 8 • EMCO 9: logical fit with neighboring systems.
- 9 • § 504 (b)(2): adequate and technically sound facilities and equipment, and
10 signal quality.
- 11 • § 504 (c)(2): construction, including installation, which conforms to all
12 applicable state and federal laws and regulations and the National Electric
13 Safety Code.

14
15 In addition, I address all issues concerning public access:

- 16 • EMCO 2 with respect to public access:² the present proposed service
17 offerings to customers, including the number of channels and the ability
18 and capacity of the system to offer additional varied services in the future,
19 and the ability to provide public access.
- 20 • § 504 (b)(1): designation of adequate channel capacity and appropriate
21 facilities for public, educational, or governmental use.

² Ms. Frankel addresses EMCO 2 with respect to programming areas other than public access.

- § 504 (b)(3): a reasonably broad range of public, educational and governmental programming.

I discuss the proposed transaction and subsequent ownership structure including, in particular, the possibility that control of Cable Holdco Exchange III LLC (“Holdco”) would not transfer from Time Warner to Comcast contemporaneous with Adelphia’s sale of its Vermont cable assets to Holdco.

I discuss a portion of the CPG conditions proposed by Comcast,³ as well as several of the conditions currently applicable to Adelphia that Comcast did not propose to carry forward. I describe a portion of the additional CPG conditions proposed by the Department, and explain why those conditions are reasonable and necessary to assure that issuance of a CPG is in the public good in order for the Board to approve the transactions and authorize Comcast to provide cable service in Vermont.⁴

Q. Please generally summarize your conclusions regarding the CPG conditions proposed by Comcast that you discuss in your testimony.

A. The conditions proposed by Comcast are, for the most part, reasonable, and are very similar to the conditions proposed by the Department. However, if the Board is to

³ Exhibit DPS-DLF-1 identifies the CPG conditions proposed by Comcast that I address in this testimony.

⁴ Exhibit DPS-DLF-2 identifies the CPG conditions proposed by the Department that I address in this testimony.

1 make affirmative findings with the respect to areas that my testimony addresses, the CPG
2 must incorporate the conditions that I and other the Department witnesses recommend in
3 lieu of those recommended by Comcast.

4 Transaction and Resulting Ownership Structure

5 Q. You stated earlier that you would address the particular elements of the transaction,
6 including the possibility that control of HoldCo would not transfer from Time Warner to
7 Comcast contemporaneous with Adelphia's sale of its Vermont cable assets to HoldCo.
8 Would you please elaborate?

9 A. Yes. Petitioner's witness Steven Hackley, states:

10 While it is the full expectation of the parties that the two transactions will
11 occur contemporaneously (and in direct succession), it is possible that the
12 Adelphia acquisitions by Time Warner Cable and Comcast will occur, but
13 that any or all of the exchanges will not occur. While unlikely, it is
14 possible that the assets may be assigned to Holdco as an indirect
15 subsidiary of Time Warner Cable and then Holdco not be acquired by
16 Comcast depending upon whether all necessary federal, state and local
17 regulatory approvals are obtained.⁵

18 Petitioner's witness Barry Rosenblum also alludes to this possibility,⁶ and proceeds to
19 offer extremely brief testimony (pages 4 and 5 of his prefiled testimony) relating to
20 whether Time Warner is qualified to operate the Vermont systems in the event that the

⁵ Prefiled direct testimony of Stephen Hackley, 6/20/05, page 5, lines 9-15.

⁶ See prefiled direct testimony of Barry S. Rosenblum, page 3.

1 transfer of control to Comcast transaction is delayed or not consummated.

2 Q. Should the Board approve the two transactions, i.e. the asset sale from Adelphia to
3 Holdco and the transfer of a controlling interest in Holdco from Time Warner to
4 Comcast, separate and apart from one another?

5 A. No. Based on the information presented by Time Warner in its initial filing, I
6 would recommend the Board not do so. The Petitioners' filings to date, and specifically
7 the Petitioners' proposed CPG filed on July 22, 2005, indicate that they only seek
8 issuance of a CPG for Holdco d/b/a Comcast. Time Warner did not file a Proposed CPG
9 and therefore the parties and the Board have not had the opportunity to scrutinize a Time
10 Warner Proposed CPG. Therefore, the Board should approve the asset sale and issue an
11 CPG to Holdco only on the condition that it occur contemporaneous with transfer of
12 control of Holdco to Comcast. This condition is necessary, given the record offered to
13 date by Petitioners, in order for the Board to conclude the asset sale and Adelphia's
14 abandonment of cable service in Vermont will promote the general good of the State.

15 Q. Please explain.

16 A. Although Petitioners have only proposed a CPG for Holdco d/b/a Comcast and
17 have primarily asserted Comcast's qualifications to support issuance of the requested
18 CPG, they also, in effect, are asking the Board to consent to either Comcast or Time
19 Warner to own and operate the current Vermont Adelphia systems. While I do not

1 dispute Time Warner's credentials as a cable system operator, all indications are that
2 Comcast is readying itself to operate the Vermont cable systems,⁷ and that Time Warner's
3 attention and preparatory efforts are directed at other cable systems that it will acquire
4 from Adelphia or Comcast.⁸ Even the most capable organization would be hard-pressed
5 to do on short notice all the things necessary to assume control of such a large and
6 complex business.⁹ The transfer of control entails far more than a financial transaction.
7 The Vermont-located staff may remain the same, but many of the back-office functions
8 and most of the upper-level management functions will shift to different staff, different
9 systems and different methods. It is not difficult to envision scenarios where, on
10 relatively short notice, Time Warner must prepare itself to own and operate the Vermont
11 cable systems, and where last-minute planning or hasty coordination results in a
12 deterioration in service to Vermont cable consumers. Such deterioration is less likely to
13 occur if Vermont systems and Vermont customers are transferred to the entity – Comcast
14 – that is readying itself to acquire the Vermont properties. An even more troubling
15 scenario would be for consumers to suffer a degradation in service from an hasty transfer

⁷ According to Comcast's response to Q.DPS:PET.3-40: Holdco will not have a separate and independent management structure apart from Comcast.

⁸ A further indication that Time Warner is not preparing to operate the Vermont systems is its failure to propose a CPG for the Board's review in this proceeding.

⁹ The petitioners note that, if Holdco were viewed as a stand-alone cable operator, it would rank among the top 15 cable operators in the country, serving approximately 566,266 subscribers. See response to Q DPS:PET.1-10.

1 to Time Warner, only to be transferred again to Comcast. The Board should not allow for
2 this possibility, however unlikely it may be.¹⁰

3 Q. How should the Board preclude this scenario?

4 A. The Board should condition its approval of the sale of Adelphia's Vermont assets
5 to Holdco, its consent to Adelphia's abandonment of service and revocation of its CPGs,
6 and the issuance of a CPG to Holdco to require contemporaneous or nearly
7 contemporaneous transfer of the controlling interest in Holdco from Time Warner to
8 Comcast. See, Ex. DPS-DLF-2, Proposed Ordering Clause.

9 DPS makes this recommendation based on the Petitioners' filings in this docket to
10 date. DPS is willing to review this recommendation if Time Warner provides additional
11 information, including, but not limited to the following: 1) a proposed CPG; 2) it
12 demonstrates that it seeks and is sufficiently prepared to operate the current Adelphia
13 Vermont systems; and 3) it demonstrates that Holdco meets the criteria for issuance of a
14 CPG if it is controlled and managed by Time Warner, rather than Comcast.

15
16 EMCO 3: the commitment to a construction and in-service schedule

17 Q: What framework do PSB administrative rules establish for the Board's review of cable
18 franchise petitions?

¹⁰ Comcast characterizes this scenario as "highly unlikely, but possible." See response to Q.DPS:PET.3-43.

1 A: Board Rule 8.214 provides that, in determining whether to approve or reject a
2 petition requesting a certificate of public good for a cable system service area, the Board
3 shall consider the criteria of 30 V.S.A. Chapter 13, as well as the criteria known as the
4 “EMCO” criteria., which are enumerated in Board Rules 8.214 (A) and (B).

5 Q. What is EMCO criterion 3 – i.e. the standard enumerated in Rule 8.214(B)3?

6 A. The third criterion listed in Rule 8.214(B) is: “the commitment to a construction
7 and in-service schedule.”¹¹

8 Q. What facts are pertinent to the Board’s consideration of this criterion?

9 A. Comcast proposes to assume control of, and operate, a cable system that now
10 exists and is in service. To the extent that the Board originally conceived this criterion to
11 assure timely construction of a new cable system, this criterion is, for the most part,
12 inapplicable with respect to Comcast’s proposal to acquire and operate Adelphia’s
13 Vermont cable systems. Please note that, in saying this, I intend a distinction between
14 this criterion, EMCO 3, and the criterion that addresses line extensions, EMCO 7. I will
15 address EMCO 7 next.

16 Q. Can the Board make affirmative findings relative to EMCO 3 on the basis of the CPG

¹¹ Throughout this testimony, I will use the abbreviated term “EMCO 3” and similar terms to reference the respective sub-sections of Rule 8.214(B).

1 conditions proposed by the Department?

2 A. Yes, it can. Because Adelphia's system exists and is now in-service, the Board
3 can conclude that the EMCO 3 is satisfied on the basis of the CPG conditions proposed
4 by the Department.

5 EMCO 7: availability of service to maximum number of residences

6 Q. What is EMCO criterion 7 – i.e. the standard enumerated in Rule 8.214(B)3?

7 A. The seventh criterion listed in Rule 8.214(B) is: “availability of service to
8 maximum number of residences.”

9 Q. What facts are pertinent to the Board's consideration of this criterion?

10 A. In a settlement agreement with the Department (the “Docket 6877 Line Extension
11 Agreement”), approved by the Board in Docket 6877, Adelphia committed to construct
12 certain line extensions that were previously identified pursuant to a settlement agreement
13 and Board order in Docket 6445. Among other things, the Docket 6877 Line Extension
14 Agreement established minimum construction milestones for the remaining Docket 6445
15 miles, obligates Adelphia to construct additional line extensions – the quantity of which
16 depends on how soon construction of the Docket 6445 miles is complete – and required
17 Adelphia to post a construction completion bond in relation to the settlement line
18 extensions.

19 Adelphia has, to date, met or exceeded the minimum construction milestones for

1 the Docket 6445 line extensions as required by the Docket 6877 Line Extension
2 Agreement. A significant portion of the line extensions required by the Docket 6877 Line
3 Extension Agreement, however, will not be accomplished prior to the closing of the
4 transactions for which the Petitioners seek Board approval. Consumers who do not now
5 have access to cable and other services offered by Adelphia will benefit from gaining
6 access to these services. The transactions proposed would be detrimental to the public
7 good if these line extension construction obligations did not carry forward to Comcast.

8 Importantly, Comcast has agreed to accept these obligations and proposed that
9 the Board incorporate the terms of the Docket 6877 Line Extension Agreement into the
10 CPG that the Board would issue to Comcast.¹² Doing so would preserve and transfer to
11 Comcast these line extension obligations, and would allow the Board to find that the
12 EMCO 7 criterion is satisfied relative to the remaining Docket 6445 line extensions and
13 the additional line extensions required by the Docket 6877 order.

14 Comcast's responses to discovery indicate that it understands the magnitude of the
15 capital expenditures necessary to construct the remaining line extensions, and also
16 indicate that it intends to develop specific plans for their construction soon after closing

¹² See Petitioners' Exhibit TWC/Comcast-2, ¶¶ 36 - 40. Comcast incorporated relevant provisions of the Docket 6877 settlement agreement into its Proposed CPG, some of which are contained in Footnote 1 to ¶36, rather than into the body of ¶ 36. The Department is relying on Comcast's representation, in proposing Footnote 1, that these statements are accurate, or that any CPG would be subject to their agreement with those statements and any CPG issued as a result of this proceeding should specifically contain the provisions proposed by Comcast in Footnote 1.

1 the acquisition transactions.¹³

2 Q. How do the CPG conditions proposed by Comcast address line extensions other than the
3 Docket 6445 / 6877 line extensions?

4 A. Conditions 30 through 35 proposed by Comcast pertain to on-going line extension
5 obligations. Adelphia sometimes calls such extensions Business as Usual or “BAU”
6 extensions.

7 Comcast’s proposed paragraph 30 would require it to construct during the
8 following calendar year all line extensions that meet or exceed the Minimum Qualifying
9 Density. Paragraph 35 requires annual calculation of the Minimum Qualifying Density,
10 specifies the method of calculation, and allows that carrying charges and other costs may
11 be updated annually. Paragraph 31 establishes rules for which locations would count as
12 “passed” by a line extension, for converting commercial and seasonal locations to
13 equivalent units, and for counting verified subscribers. Paragraph 34 specifies the house
14 count survey method. Paragraph 32 would require Comcast to perform a house count
15 annually and report the results to the Department. Paragraph 33 would require Comcast
16 to report quarterly to the Department on line extension project status. In addition, under
17 Comcast’s proposed paragraph 12.viii and 12.ix, Comcast would file with its annual
18 report a house count survey that identifies unserved areas that qualify for construction

¹³ See responses to Q.DPS:PET.1-5 and 1-6.

1 during the current year without a customer contributions in aid of construction, as well as
2 its calculation of the Minimum Qualifying Density (also known as “H”).

3 For example, to be clear about the timing, on or about April 15, 2006, Comcast
4 would file its calculation of “H” that used calendar year 2005 data (average revenue per
5 subscriber, average service penetration, and average line extension cost per mile).¹⁴ The
6 house count survey conducted during 2006 would identify all road segments that met or
7 exceeded the “H” value filed on April 15, 2006. Comcast would be required to complete,
8 by the end of calendar year 2006, construction of all such extensions. The process would
9 repeat each year, based on the new ends-of-lines, new data for calculation of “H”, and a
10 new house survey of un-served areas.

11 For the most part, those conditions are identical to the conditions now applicable
12 to Adelphia. The one area in which the conditions differ concerns house count survey
13 methods. Comcast’s proposed condition 34 reflects new, GIS-based house count survey
14 practices that Adelphia developed and that the Department believes are reasonable.

15 Q. Do you recommend the Board adopt the conditions proposed by Comcast relative to on-
16 going or “business as usual” line extensions?

17 A. Some, but not all. I recommend the Board adopt a largely similar set of
18 conditions in place of Comcast’s paragraphs 30 through 35. The conditions I propose in

¹⁴ If the Minimum Qualifying Density or “H” value is specified in tariff, Comcast would also file an amended tariff that incorporates the revised value.

1 place of 30 through 35 are set forth in Exhibit DPS-DLF-2. The middle column of the
2 exhibit summarizes the revisions I recommend; some are substantive, while some are
3 only editorial.

4 Conditions 30, 31 and 33, as proposed, are fine. Condition 32 can be modified by
5 substituting the word “schedule” for “budget”; the estimated cost of specific extensions is
6 not essential information, but the locations of specific qualifying extensions should still
7 be reported. The recently-revised house count procedures should be adopted, as proposed
8 in condition 34, but to assure a common understanding, the procedures should be attached
9 to the CPG instead of being incorporated by reference.

10 Condition 35 should be modified to incorporate the Board’s directives, in Docket
11 6778, concerning revisions to values used calculating Minimum Qualifying Density. The
12 Board directed Adelphia as follows:

13 1. When Adelphia next files its calculation of the Qualifying Density for
14 the construction of post-Docket 6445 line extensions without customer
15 contribution, it may use current data for all parameters in the formula. In
16 particular, it may use a number for Cost of Construction in 2002 that does not
17 exceed \$23,759 per mile.

18 2. Consistent with the Order in Dockets 6101/6223, Adelphia shall file
19 updated revenue calculations annually. To the extent that Adelphia seeks to
20 modify other elements of the Qualifying Density formula, it shall base its
21 adjustments on the same time period (to the extent possible). If audited financial
22 statements are not available, the Company shall use unaudited numbers. The
23 recalculation of the Qualifying Density shall be subject to adjustment and review
24 by the Department and the Board.¹⁵

¹⁵ Order of 4/11/03. See, in particular, ordering clauses 1 and 2, on page 36.

1 I also recommend the Board modify proposed condition 35 to clarify that average line
2 extension unit cost for prior year will be used to calculate Minimum Qualifying Density
3 (“MQD”) – which has been Adelphia’s practice subsequent to the Board’s order in
4 Docket 6778, and to incorporate the Board’s Docket 6778 guidance concerning changes
5 to other parameters, data sources for financial information, and review and potential
6 adjustment of calculations filed by company.

7 Q. Are there other elements of the Board’s 4/11/03 order in Docket 6778 that the Board
8 should incorporate into Comcast’s new CPG?

9 A. Yes, in part. Ordering clauses 3 and 4 of that order stated:

10 4. In its count of houses performed to determine qualified post-Docket
11 6445 line extensions, Adelphia may count any house with an appurtenant satellite
12 dish as one-third of a house.

13 5. Adelphia shall maintain and file annually a calculation of the
14 penetration rate of line extensions built counting dish-houses as one-third of a
15 house. The calculation shall be made to make the effect of the discount for
16 satellite dishes identifiable.¹⁶

17 Comcast incorporated the former condition,¹⁷ but not the latter.

18 Q. Why should the Board care about this issue?

¹⁶ *Id.* at 37.

¹⁷ *See* Exhibit TWC/Comcast-2, paragraph 31, item 11.

1 A. The discounting (i.e. counting a home with a dish as the equivalent of one-third of
2 a home) reduces the measured density (i.e. equivalent homes-passed per mile) of potential
3 line extensions, and therefore reduces the mileage that qualifies for line extensions
4 without customer contributions in any particular year. Given the high penetration rate of
5 DBS television service in Vermont – particularly in areas without access to cable service
6 – the impact on qualifying line extensions may be significant.

7 Since Vermont's minimum qualifying density calculation is intended to estimate a
8 cable operator's likely service penetration on potential line extensions, and some DBS
9 customers will not feel compelled to migrate to cable service, some level of discounting
10 may be reasonable. Setting the equivalence at the appropriate value, however, is another
11 matter. Bear in mind that the MQD formula incorporates the cable operator's average,
12 system-wide service penetration rate. For Adelphia, this value now stands at roughly
13 60%. So, further discounting satellite-owning homes to just one-third of a home-passed
14 amounts to assuming that 20% or less (one-third of 60%) of DBS subscribers will convert
15 to cable service. Given Adelphia's aggressive roll-out of advanced services, Comcast's
16 intention to offer voice communications services (which DBS providers do not offer, to
17 my knowledge), the inferior performance and high price of DBS-based Internet service,
18 and consumers' apparent preference for service bundles, it may be the case that the one-
19 third equivalence factor is unrealistically low.

20 Q. Should the Board incorporate this one-third factor as a condition of Comcast's CPG, even

1 though it may be low?

2 A. Yes, it should, provided that the CPG or Board order granting the CPG also leaves
3 the door open for Comcast, the Department or the Board to revise the DBS-home
4 equivalence factor. In addition to allowing Adelphia to apply the one-third equivalence
5 factor, the Board's order in Docket 6778 – as I understand it – also required Adelphia to
6 report on its rate of success in converting dish owners (whether or not those owners were
7 actually subscribing to DBS service) to cable service after cable service becomes
8 available. I recommend the Board incorporate this condition into Comcast's CPG, as
9 well, to allow the Board and Department to assess whether the one-third equivalence
10 factor is reasonable. In Exhibit DPS-DLF-2, this condition is denoted as paragraph 31a.

11 Q. Can the Board make affirmative findings relative to EMCO 7 for these other line
12 extensions on the basis of the CPG conditions proposed by the Department?

13 A. Yes, I believe it can. Conditions 30 through 35, including 31a, proposed by the
14 Department are sufficient to support affirmative findings by the Board relative to EMCO
15 7.

16 EMCO 8: the quality of the engineering and materials used in the system

17 Q. Will the quality of the engineering and materials used in the system by Comcast be
18 adequate?

19 A. To my knowledge, the Department has not in recent years had any reason to doubt

1 the quality of Adelphia's engineering or the materials it used. Comcast evidently holds
2 Adelphia's Vermont system in high regard, stating "... in general Comcast understands
3 that the Adelphia network in Vermont is in capacity and quality comparable to many of
4 the Comcast systems nationwide and better in capacity and quality than other Adelphia
5 franchises throughout the nation."¹⁸

6 Comcast will be acquiring Adelphia's Vermont-located plant, and intends initially
7 to operate the Vermont systems without major modifications. So the transfer of control
8 should have no immediate adverse effect on the quality of engineering and materials used
9 in the system.

10 Comcast attests to its own engineering capabilities and soundness of its existing
11 systems. The Department has no reason to doubt Comcast's assertions and its intention
12 to apply quality engineering and use high quality materials as it maintains, extends and
13 upgrades the Vermont systems.

14 EMCO 9: logical fit with neighboring systems

15 Q. Will Comcast's acquisition of Adelphia's Vermont cable systems result in a logical fit
16 with neighboring systems?

17 A. The acquisition will do nothing to alter the footprint of the existing Adelphia
18 systems within Vermont, or their geographic relationship to other cable systems located

¹⁸ Excerpt from Comcast's response to DPS-PET 3-22.

1 within Vermont. At the same time, though, Comcast's acquisition of Adelphia's
2 Vermont assets will incorporate the Vermont systems into much larger cluster that
3 includes much of Massachusetts and southern New Hampshire.

4 Mr. Hackley's prefiled testimony¹⁹ identifies several benefits, such as greater
5 reliability, that should arise from the addition of a large share of Adelphia's New England
6 cable systems to the Comcast's existing New England systems.

7 § 504(c)(2): construction, including installation, which conforms to all applicable state and
8 federal laws and regulations and the National Electric Safety Code.

9 Q. To your knowledge, are the Vermont systems that Comcast will acquire from Adelphia
10 constructed in conformance with all applicable state and federal laws and regulations and
11 the National Electric Safety Code?

12 A. I do not have the expertise to independently conduct such an assessment, nor has
13 the Department undertaken such a review in relation to this petition. That said, I am not
14 aware of any information that would suggest Adelphia's construction does not conform.
15 Comcast states its understanding that Adelphia entities have built and are building their
16 systems to meet applicable state and federal laws and regulations and the National
17 Electric Safety Code.²⁰

¹⁹ Page 5, line 18 through page 6, line 9.

²⁰ See Hackley pf. at 16.

1 Q. Mr. Hackley states²¹ that Comcast commits to meet these requirements and the National
2 Electric Safety Code. Do you have any no reason to doubt that Comcast intends to
3 construct its Vermont cable systems out of conformance with applicable state and federal
4 laws and regulations and the National Electric Safety Code?

5 A. No, I do not.

6 § 504(b)(2): adequate and technically sound facilities and equipment, and signal quality

7 Q. Will Comcast's Vermont facilities and equipment be adequate, technically sound, and
8 furnish adequate signal quality?

9 A. Similar to what I have stated with respect to several other criteria, Comcast will
10 be acquiring and operating Adelphia's Vermont plant. So, the acquisition should have no
11 effect – favorable or unfavorable – on the adequacy or soundness of the facilities and
12 equipment used to offer service. I have no reason to doubt that, over the longer term,
13 Comcast will construct facilities and use equipment that is adequate and technically
14 sound. The service quality results reported to the Department and the level of consumer
15 complaints directly to the Department would, hopefully, reveal any degradation in service
16 that might result from use of inadequate facilities.

17 The availability of services and programming, which Ms. Frankel discusses in
18 greater detail in her discussion of the EMCO 2 criterion, depends in part on the adequacy

²¹ *Id.*

1 of facilities. Comcast notes its aggressive efforts to upgrade its systems to support digital
2 cable service and other advanced cable services,²² and specifically notes its industry
3 leadership in introduction of high definition (“HD”) services and Video on Demand
4 (“VOD”) services. Nearly all of Adelphia’s Vermont system is already capable of
5 offering nearly all of the advanced services that Comcast has deployed elsewhere.

6 Q. You say “nearly all....” Do all of Adelphia’s Vermont systems have the same capacity?

7 A. No. Portions of the Newport system utilize an older generation of equipment than
8 the rest of Adelphia’s Vermont systems. The Newport system operates with 550 MHz
9 bandwidth, while all other Adelphia Vermont systems operate with 750 MHz or more.²³
10 While this plant may be technically sound, less bandwidth translates to less capacity
11 available for transport of content. The 550 MHz capacity is inadequate to offer
12 subscribers in this area the same range of programming and service areas as Adelphia
13 offers elsewhere in Vermont.

14 Q. Is the Newport system the only Adelphia system in Vermont that presently operates at
15 less the 750 MHz?

16 A. It is the only system Adelphia identified in response to the Department’s request

²² See Hackley pf. at 11.

²³ See Adelphia’s response to DPS:PET.3-5.

1 to identify all such systems.²⁴

2 Q. How many subscribers are presently served by this 550 MHz system?

3 A. According to Adelphia, the Newport system had approximately 3,950 subscribers
4 as of 6/30/2005.²⁵

5 Q. In what respects do the services or programming offered to Newport area subscribers
6 differ from those offered elsewhere in Vermont?

7 A. At present, there are differences. First, the number of channels available in high
8 definitions (“HD”) format is fewer in Newport – currently five in Newport versus 14 to
9 19 now offered by Adelphia elsewhere in Vermont.²⁶ Second, Adelphia offers video on
10 demand service (“VOD”) throughout Vermont, except to these Newport subscribers.

11 The disparity could increase over time, as Adelphia (or Comcast) expands the
12 range of HD programming offered and introduces new advanced services that are not
13 feasible over the 550 MHz system. For example, Comcast has been deploying “digital
14 simulcast” of the basic service tier elsewhere in New England, and plans to do so in

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*; Adelphia’s response to DPS:PET.3-24.A.

1 Vermont.²⁷ In this context, digital simulcast means the simultaneous broadcast of the
2 basic service tier in analog and digital format. Among other benefits, the quality of on-
3 screen images derived from a digital signal are generally superior to images from an
4 analog signal. (The difference in picture quality, I gather, similar to that between DVDs
5 and VHS tapes.)

6 Q. Does any requirement exist, now, for Adelphia to upgrade this Newport system?

7 A. No. The CPG for Mountain Cable, which owns the Newport system, establishes
8 no specific requirement for upgrade of that system. Adelphia was required to upgrade
9 several systems, but Newport was specifically excepted.²⁸ The specific system upgrade
10 requirements were concentrated principally on older, 450 MHz systems. During the time
11 frame in which renewal of Mountain Cable's CPG was under consideration²⁹ the 550
12 MHz system was – to my knowledge – capable of delivering all the services that
13 Adelphia offered over its newer, 750 MHz systems. Adelphia was just beginning to
14 deploy advanced services, but had not yet deployed VOD or any HD programming. Five
15 plus years have passed, and Adelphia appears to have pushed the 550 MHz system to its

²⁷ See Comcast's response to DPS:PET 3-23.

²⁸ See Mountain Cable revised CPG (issued 7/19/2000 in Docket 6101), paragraph 42.

²⁹ Docket 6101 ended in early 2000 after a lengthy investigation.

1 capacity limit, yet appears to have no immediate plans for its upgrade.³⁰ If not
2 relinquished in connection with this investigation, Mountain Cable's CPG would expire
3 in 2011. An investigation of a renewal request would likely be the occasion for the
4 Department and Board to consider whether Adelphia's system was adequate and whether
5 Adelphia continued to offer a reasonably broad range of programming, having regard to
6 available technology, subscriber interest, the revenues and potential revenues of the
7 systems, and costs. Issuance of a new CPG to Comcast, however, would push out these
8 evaluations by another five years, to 2016. If the Newport system is taxed even now, then
9 eleven years is surely too long to wait before next examining its adequacy.

10 Comcast states that it has no plan to further upgrade this system, but it will
11 evaluate within 24 months after Comcast assumes control of the system "any potential
12 limitations to determine if a business reason exists that would warrant any further
13 modification of the network."³¹

14 Q. Should the Board impose a condition on Comcast relative to adequacy and potential
15 upgrade of the Newport system, or should it instead rely solely upon Comcast's business
16 judgment to assure that consumers in this area have access to a reasonably broad range of
17 programming?

³⁰ Adelphia's response to DPS:PET.3-24.D.

³¹ See Comcast's response to DPS:PET 3-5.e.

1 A. If access to cable programming has societal value, and the HD and VOD services
2 Comcast will offer in Vermont are as popular as with Comcast subscribers elsewhere,³²
3 then it is important to the general good of the state that the disparity in available services
4 across the state be minimized. I recommend the Board take more affirmative measures
5 than simply relying on Comcast's business judgement. Specifically, I recommend the
6 Board require Comcast to upgrade the Newport system to 750 MHz or more within two
7 year of acquiring it unless it can demonstrate that the system is otherwise capable of
8 offering VOD service and at least three-fourths of the maximum number of HD channels
9 Comcast then offered elsewhere in Vermont.

10 Q. Aside from the upgrades required under the terms of Mountain Cable's CPG, issued in
11 Docket 6101, has the Board previously directed Adelphia to upgrade systems?

12 A. Yes. I have not done a comprehensive search of all previous Board orders
13 concerning cable companies. However, the CPGs currently in effect for several Adelphia
14 operating companies required upgrades. In Docket 6003, MultiChannel was directed to
15 rebuild the Grafton and Saxton River systems within 18 months, and fulfill system
16 upgrades required under a social contract between Time Warner, Warner Cable and the
17 FCC.³³ In Docket 6002, Frontiervision was directed to rebuild Morrisville, Hyde Park,

³² See Hackley pf. at 12-13.

³³ See Docket 6003 CPG conditions 24 and 26.

1 St. Albans and former TCI and Westmac systems.³⁴ In Docket 5847, Young's Cable TV
2 was required to rebuild its system in the Mt. Ascutney area to a higher bandwidth.³⁵

3 Q. Has Adelphia developed an estimate of the costs necessary to upgrade the Newport
4 system to 750 MHz or greater?

5 A. Adelphia provided such an estimate to the Department. Adelphia estimated a
6 capital cost of \$

7 *****BEGIN CONFIDENTIAL INFORMATION*****

8
9 *****END CONFIDENTIAL INFORMATION*****

10 MHz system, depending on the specific architecture used.³⁶

³⁴ See Docket 6002 CPG conditions 26, 27 and 28.

³⁵ See Docket 5847 Order of 6/20/96, CPG condition 24. Condition 24 states "Young's shall, within 120 days of the date of this Certificate, prepare and file a schedule for the rebuilding of all of its systems to 550 MHz, and the connection of small, outlying systems to larger nearby systems." There is no mention in the order or CPG of the existing system capacity at the time.

³⁶ See Adelphia's August 26, 2005 Supplemental Response to Q.DPS:PET.3-5d and proprietary workpapers attached.

1 Public Access Requirements and Issues

2 Q. Under the EMCO 2 criterion, the Board gives consideration to the present proposed
3 service offerings to customers, including the number of channels and the ability and
4 capacity of the system to offer additional varied services in the future, and the ability to
5 provide public access. Will the CPG conditions proposed by Comcast provide for
6 adequate public access service offerings, including an adequate number of channels?

7 A. For the most part, yes. The CPG conditions proposed by Comcast do not establish
8 specific levels or types of public access service offerings, but instead incorporate by
9 reference the standards and procedures established by Board Rule 8.400. The revised
10 version of this rule was effective on March 1, 2005.

11 In general, Rule 8.400 establishes procedures for the evaluation of community
12 need for public access services, and adoption of a public access plan. Rule 8.400
13 establishes procedures for the establishment and operation of access management
14 organizations (“AMOs”). It also creates a framework for AMOs and cable operators to
15 negotiate funding, use of cable operator facilities, operational support to AMOs, and the
16 types and numbers of public access services that will be provided. In negotiating the
17 types and numbers of access services to be supported, due consideration must be given to
18 the cost of the service, the effect of the cost on the cable operator and its cable
19 subscribers, whether the operator has capacity available to provide the service, whether
20 provision of the service is consistent with the access plan, whether the service responds to
21 community needs, and whether more cost-effective means of meeting the community

1 need are available. The rule establishes a framework for resolution of disputes if
2 negotiations fail.

3 Such a comprehensive administrative rule concerning public access did not exist
4 when the Board last renewed Adelphia's CPGs, for instance in Docket 6101. Because the
5 revised Rule 8.400 establishes a comprehensive framework for the provision of public
6 access cable services, there is no need for the detailed CPG conditions concerning public
7 access. A general CPG condition that requires Comcast to abide by Rule 8.400,
8 supplemented with a few specific conditions will suffice. Condition 28 proposed by
9 Comcast, which the Department endorses, serves as the general condition:

10 Comcast shall provide reasonable PEG access in accordance with the standards
11 set forth in PSB Rule 8.400, as may be amended from time to time.

12 The necessary additional, specific conditions are: 19, 20, 23, 24, 25 (with revisions), 26,
13 27 and 29 proposed by Comcast, and additional conditions 18a, 18b, 19a proposed by the
14 Department.

15 Q. Will Comcast's system have the ability and capacity to offer additional or varied public
16 access services in the future?

17 A. Public access services currently offered by Vermont Access Management
18 Organizations ("AMOs") are exclusively conventional public, educational, governmental
19 or multi-purpose community channels that Adelphia broadcasts in analog format as part
20 of "Basic Service." This has been the case since the inception of public access television

1 in Vermont. In the meanwhile, the service capabilities of cable systems have increased in
2 many ways, and Adelphia has deployed many new commercial cable services
3 (“commercial” meaning services other than public access) that utilize these new service
4 capabilities. Those new services include digital programming, high definition
5 programming, video on demand, digital video recorders (“DVR”), to name the most
6 significant new advanced services. It should be technically feasible for public access
7 content to likewise be created and delivered to viewers in these formats and over these
8 same platforms.

9 Storing and allowing access to public access content over video on demand
10 (“VOD”), for example, would seem to be a public access service that consumers would
11 especially value.³⁷ Simulcasting public access stations in digital format, for another
12 example, would allow DVR subscribers to store and view public access programs at times
13 convenient to them. Moreover, Adelphia’s ability to add new public access channels in
14 the basic service tier over its existing systems is constrained – as will be Comcast’s –
15 while its capacity to broadcast in digital format numbers in the hundreds of channels.
16 Many more public access stations than the existing three could be broadcast if done in
17 digital format. More options and capabilities for statewide public access content relay
18 among AMOs, simultaneous statewide broadcast of public access, and live origination
19 across systems exist now than did five years ago.

³⁷ Comcast’s response to Request DPS-PET 3-26(B) provides no indication that distribution of public access programs over video on demand would be technically infeasible.

1 In summary, Adelphia's system now has the ability and the capacity to offer
2 additional and varied public access programming. There remain, however, the questions
3 of whether sufficient community need exists; whether the AMOs have the technical,
4 financial, human and organizational capacity to create and deliver the programming;
5 whether the additional service is worth the cost imposed on the cable operator and its
6 subscribers; and whether more cost-effective methods of delivery exist. These are all
7 matters that the Board intended, in revising Rule 8.400, for cable operators and AMOs to
8 evaluate, negotiate and contract for, and – only if operators and AMOs cannot reach
9 agreement – for the Board to resolve.

10 Q. Statutory criteria, under 30 V.S.A. § 504, for the issuance of cable CPGs include §
11 504(b)(1):

12 designation of adequate channel capacity and appropriate facilities for public,
13 educational and governmental use;

14 and § 504(b)(3):

15 a reasonably broad range of public, educational and governmental programming.

16 Will Comcast, and the CPG conditions it proposed, provide for these?

17 A. For the most part, for same reasons as I noted above with respect to EMCO
18 criterion 2, yes. In general, the Department has no reason to doubt Comcast's capability

1 and willingness to support public access, and believes Comcast has offered enough
2 information for the Board to make the necessary findings. We are nonetheless open to
3 consideration of any information or concerns that the AMOs might bring to our attention
4 in their direct testimony.

5 Q. Since you qualified your response, what revisions or additions, if any, to the CPG
6 conditions proposed by Comcast are necessary to assure these statutory criteria will be
7 met?

8 A. My qualified response relates to several issues – first, whether Comcast intends to
9 retain a locally-based public access coordinator; second, assuring that whatever public
10 access surcharge revenue Adelphia has collected remains in escrow and will be available
11 for disbursement if and when any AMOs start-up in the communities for which an AMO
12 has yet to be designated; third, whether Comcast should continue Adelphia's practice of
13 assessing a public access surcharge in communities where public access service is not yet
14 provided, and reserving it for eventual disbursement; and fourth, whether the CPG should
15 establish a five percent as the minimum public access surcharge and funding level, as
16 Comcast has proposed.

17 Q. Has Adelphia been assessing and collecting from subscribers a public access surcharge
18 even in communities that receive no access programming or have no AMO designated?

19 A. Yes, that is my understanding, at least with respect to the communities served

1 pursuant to the Docket 6101 CPGs. They have been assessing a 2.5% surcharge, as was
2 required by Board order in 6101. It may be the case that they were not applying the
3 surcharge in communities not covered by that or similar CPGs. The Board directed
4 Adelphia to maintain any such funds in escrow until disbursed to an AMO that would
5 serve the community. As the number of communities with public access has expanded in
6 recent years, the amount of funds remaining in escrow has diminished. As of June 2005,
7 Adelphia was holding roughly³⁸ \$160,000 in escrow for potential use by five communities
8 – Londonderry (\$94,000); Weston (\$50,000); Pawlet (\$4,300 plus an indeterminate
9 amount of interest); West Pawlet (\$4,600 plus interest); Reading (\$2,700 plus interest);
10 and Wells (\$5,800 plus interest).³⁹

11 But since the funds were collected from subscribers for the express purpose of
12 supporting public access, those funds should remain available after Comcast assumes
13 responsibility for serving those subscribers.

14 Q. Should the Board require Comcast to continue this practice – i.e. of assessing a 2.5%
15 public access surcharge in communities where public access service is not yet provided,
16 and reserving it for eventual disbursement?

17 A. There are interests that must weighed and balanced here. Cable subscribers have

³⁸ The some of the figures were as of April 2005, and some did not include accrued interest.

³⁹ See Adelphia response to Q.DPS:PET 3-33.

1 been, and would continue to be, the source of these funds. Cable subscribers should
2 provide no more financial support for public access than is necessary for an AMO to meet
3 community needs. Since the dates on which AMOs may begin to serve a community are
4 unknown, it is likewise not possible to know how much money will then be available in
5 escrow to cover start-up expenditures; the longer the surcharge applies, the more likely
6 the funds in escrow will exceed amounts reasonably necessary for start-up of an AMO.
7 Another shortcoming of continuing to collect and escrow funds is that the consumers that
8 pay in advance and those consumers that eventually have access to the programming will
9 differ. All factors considered, I recommend the Board not require Comcast to continue
10 the practice of surcharging for public access funding in advance of AMO startup.
11 Alternatively, the Board could continue the surcharges but until the amounts collected
12 reach pre-established caps. The AMOs may have advice to offer, as well.

13 Q. The fourth public access issue you identified for discussion was whether the CPG should
14 establish a minimum public access funding surcharge of five percent, as Comcast has
15 proposed. Should it?

16 A. No, the CPG should not establish a minimum public access funding surcharge of
17 five percent, as would Condition 25 proposed by Comcast. It would be reasonable for the
18 rate of surcharge to be established through negotiation between Comcast and the AMOs,
19 as Comcast proposed. However, such negotiations and any rate agreed upon must take
20 into account, and be consistent with, the demonstrated community need for the level and

1 types of public access services that will be supported by surcharges. There is no evidence
2 in the filings to date in this investigation, of which I am aware, that supports a conclusion
3 that on-going five-percent surcharges are necessary for all AMOs in Vermont. It may be
4 the case that: a) the public access needs are less in some communities than others, and b)
5 that economies of scale or other factors allow some AMOs to meet community public
6 access needs at funding levels less than five percent, and c) that certain AMOs have
7 accumulated cash reserves sufficient to meet community public access needs with on-
8 going receipts of lower than five percent, at least temporarily. The money that Comcast is
9 proposing collect and pass-through to the AMOs will come from the pockets of
10 consumers, and the amount of consumer funds allocated to public access is substantial.
11 Comcast's CPG, like all CPGs, should not impose a public access funding burden that
12 exceeds community need – whether or not the cable operator is willing to do so.
13 Consistent with this view, the Department recommends revising Condition 25, proposed
14 by Comcast, to read as follows:

15 Unless otherwise agreed by an AMO, but in any case subject to
16 demonstration of community need for the level and types of public access
17 services that will be provided, total operating funding within each system
18 served by one or more AMOs shall not exceed 5% of the Company's
19 annual gross revenues earned in that system. (Underlined text reflects
20 differences relative to Condition 25 proposed by Comcast.)

21 Q. Are any conditions proposed by Comcast concerning public access unnecessary in light of
22 the revisions to Board Rule 8.400?

23 A. Yes, several are unnecessary. Accordingly, the set of CPG conditions the

1 Department proposes (which are presented in Exhibit DPS-DLF-2) are fewer in number
2 than the conditions proposed by Comcast and considerably shorter than the Docket 6101
3 conditions. The Department's proposed deletion of these conditions does not necessarily
4 reflect opposition to, or lack of support for, the content of the deleted conditions. Some
5 of the substance of those conditions may remain necessary and reasonable, while others
6 may be outdated or unnecessarily constraining.

7 Contracts between Comcast and the AMOs are the appropriate documents in
8 which to memorialize the obligations of Comcast and the AMO to one another. Among
9 other benefits, this approach allows for periodic revision without necessitating a Board
10 investigation to amend Comcast's CPG. Rule 8.400 allows Comcast or the AMOs to
11 request the Board resolve any issues that cannot be resolved through negotiation.

12 Existing CPG Conditions Omitted or Altered by Comcast

13 Q. You stated earlier that Comcast had proposed, for the most part, to adopt the CPG
14 conditions now applicable to Adelphia, but had omitted or altered certain of those
15 conditions. Can you identify those conditions?

16 A. Yes. The petitioners did this in response to a Department discovery request, DPS-
17 PET-3-1. Where appropriate, the Department has restored into the proposed CPG, which
18 is attached to this testimony as Exhibit DPS-DLF-2, certain conditions that Comcast

1 omitted.⁴⁰

2 Q. Did Comcast propose to omit from its Certificate the current requirement that the
3 operator provide high speed Internet access to each school, municipality and AMO within
4 its service area at no charge?

5 A. Yes, but it apparently did so unintentionally. Condition 39 of Adelphia's 6101
6 CPG establishes the current obligation. Comcast proposed to continue offering High
7 Speed Internet ("HSI") service to AMOs at no charge – presumably to support their
8 production of public access programming – but not to schools and municipalities.
9 Comcast subsequently stated,⁴¹ in response to a query by the Department, that the
10 exclusion of this provision was inadvertent, and that Comcast agrees to accept the text of
11 Condition 39 condition in a CPG. Accordingly, the Department recommends the Board
12 incorporate into Comcast's CPG a condition similar to Condition 39. In addition, the
13 Department also recommends two substantive changes to that condition.

14 Q. What change is that?

15 A. To my knowledge, it has been Adelphia's practice subsequent to the 6101 Order,

⁴⁰ Due to the speed of this investigation, the Department has not independently confirmed that Comcast has identified all existing requirements of CPGs or Board orders, and reserves the right to modify its recommendation if any such requirements were not identified and accounted for in Petitioners' response to DPS-PET-3-1.

⁴¹ See Comcast response to Q.DPS:PET 1-72.

1 and perhaps before, to also offer free high speed Internet to public libraries. Libraries are
2 not listed among the institutions (only AMOs, schools and municipalities) that are
3 eligible for free HSI service,⁴² yet could almost certainly put such connections to good use
4 in service of the public. Accordingly, the condition I recommend includes public libraries
5 among the eligible institutions. The condition proposed by the Department would read as
6 follows:

7 Comcast shall provide each Public, Educational, or Governmental access
8 administrative entity and each school, public library and municipality within its
9 service area with a cable modem and high-speed Internet access at no charge at
10 the same time it offers those services to other subscribers within the area.

11 Q. Do you have any other comments concerning the free HSI service?

12 A. Yes. I should note that Adelphia has always taken the position that the service
13 offered - at least to schools and municipalities - was limited to Adelphia's standard,
14 residential user service, which was the only level of service Adelphia offered at the time
15 of Docket 6101. Subsequently, Adelphia has introduced several new HSI services that
16 are designed to suit the Internet access needs of institutions and small businesses –
17 notably allowing multiple users. While Comcast's willingness to offer this service is
18 certainly appreciated by the Department, a single-user service has limited utility to most
19 schools and municipalities that are in need of Internet access resources that are capable of

⁴² CPG condition 20, proposed by Comcast, would require Comcast to provide a drop capable of two-way service to each AMO, school and library. However, such a drop does not encompass HSI service.

1 serving several or numerous simultaneous users on multiple PCs. It would be heartening
2 to see Comcast offer these institutions a level of HSI service that was better matched to
3 their needs.

4 CPG Conditions proposed by the Department, and Significant Differences relative to the
5 Conditions proposed by Comcast:

6 Q. Are you sponsoring any of the CPG conditions proposed by the Department?

7 A. Yes, the specific CPG conditions proposed by the Department that I am
8 sponsoring are presented and identified in Exhibit DPS-DLF-2, attached to Ms. Frankel's
9 testimony.

10 Q. Are there any that you would like to explain or note, at this point?

11 A. I have explained several of conditions earlier in this testimony. Let me take this
12 opportunity to recap those, and note the other proposed conditions (that differ from those
13 proposed by Comcast) for which I am responsible:

- 14 • Proposed new condition A would require Comcast to upgrade the Newport system
15 if the services available on that system lag behind those Comcast offers elsewhere
16 in Vermont due to technical limitations.
- 17 • A proposed new condition B that restores a condition inadvertently omitted by
18 Comcast, requiring Comcast to offer free HSI service to AMOs, schools and
19 municipalities. The Department proposes to add public libraries to the eligible
20 institutions, as well.

- 1 • Proposed new condition C would require Comcast to file changes in rates, terms
2 and conditions with the Board 45 day in advance. It would require the same with
3 respect to liens, mortgages or other encumbrances on Comcast's Vermont assets.
- 4 • Proposed condition 18a, providing that Comcast shall designate one or more
5 AMO's as provided in Rule 8.400, and requiring Comcast to provide levels and
6 types of financial, operational and technical support to those AMO's that are fair
7 and reasonable and comparable relative to the levels and types of support
8 provided by the City of Burlington to the AMOs designated by the City of
9 Burlington. In Docket 7044, the Department proposed the Board apply a
10 reciprocal, similar condition to Burlington's cable CPG.
- 11 • Proposed new condition 18b, requiring Comcast to file copies of all PEG-access
12 contracts with AMOs, and any amendments thereto, with the Board and
13 Department within 30 days of execution. Rule 8.00 does not require cable
14 operators to file such contracts (which may have been an oversight in the recent
15 revision of the rule. The Department proposed a similar condition apply to
16 Burlington's cable CPG.
- 17 • Proposed new condition 31a would allow for revision of the one-third equivalence
18 factor applicable, in the house-count survey process, to homes with satellite
19 dishes, and would require Comcast to report its actual cable service penetration
20 rates in newly-built areas. The reported information would allow for evaluation of
21 whether the one-third equivalence factor remained reasonable and reflective of
22 Comcast's success rate in converting dish-homes to cable service.
- 23 • Proposed new condition 19a would establish minimum technical capabilities for a
24 statewide PEG network, should the Board designate an AMO for such a network.
25 The Department proposed a similar condition apply to BT, and the Board applied

1 a similar condition to Charter.⁴³

- 2 • The proposed ordering clause would condition the issuance of a CPG to Holdco
3 upon the contemporaneous assumption of control of Holdco by Comcast.

4 Q. Could you please, similarly, summarize the revisions to the CPG conditions Comcast
5 proposes that you recommend?

6 A. In developing the proposed CPG, the Department worked from the CPG proposed
7 by the Petitioners, TWC/Comcast-2. Exhibit DPS-DLF-2 identifies differences between
8 TWC/Comcast-2, and the CPG conditions proposed by the Department. Exhibit DPS-
9 DLF-2 briefly explains the rationale for the revisions proposed. Other Department
10 witnesses have sponsored some of the revisions. The significant revisions that I am
11 sponsoring include:

- 12 • In proposed Condition 5, using the same language the Department proposed apply
13 to BT, which excludes HSI service revenue from the revenue base to which PEG
14 surcharges apply, unless Comcast and an AMO agree otherwise.
- 15 • Revising proposed Condition 15 to establish a fixed date (eleven years from the
16 date of initial CPG date) in order to avoid inadvertent extension of the CPG term
17 if the Board subsequently revises or amends and re-issues the CPG with a
18 condition identical to condition 15.
- 19 • Appending proposed Condition 19, regarding a potential statewide public access
20 channel, to require cable operators to submit unresolved interconnection issues to

⁴³ See condition paragraph 34 of Attachment 1 - Modified Proposed CPG - to the Department's Proposal for Decision in Docket 7044, and paragraph 30.a of the CPG issued to Charter in Docket 6521.

1 the Board.

- 2 • Revising proposed Condition 25 to eliminate the unconditional assumption that
- 3 public access charges will be assessed on consumers at a five percent rate, and
- 4 subjecting all public access charges to a demonstration of community need.
- 5 • Dropping, from proposed Condition 32, that Comcast submit a construction
- 6 budget (i.e. an estimate dollar cost) for qualifying line extensions.
- 7 • Revising proposed Condition 34 to attach a document describing the method
- 8 (which uses GIS-technology) of conducting the annual house-count survey.
- 9 • Revising proposed Condition 35 to clarify that the average line extension unit cost
- 10 for the prior year will be used to calculate minimum qualifying density ("MQD")
- 11 for the subsequent year.
- 12 • Also revising proposed Condition 35 to incorporate the Board's Docket 6778
- 13 guidance concerning changes to other parameters of equation used to calculate
- 14 MQD, the appropriate sources for financial information to be used in that
- 15 calculation, and allowing for review and potential adjustment of the MQD
- 16 calculations filed by company.

17 Q. Could you briefly summarize the CPG conditions proposed by Comcast that the
18 Department recommends the Board omit entirely?

19 A. Yes. Most of such conditions pertain to public access matters that the Department
20 believes are adequately addressed in newly revised Rule 8.000 or that can be addressed
21 and are most appropriate to address through negotiations among Comcast, the AMOs and,
22 where applicable, other cable operators. Specifically, the conditions proposed by
23 Comcast that should be omitted are:

- 24 • Comcast's proposed condition 21, which establishes, in very specific terms, the

1 minimum level of support that Comcast would provide for public access outreach;
2 and

- 3 • Comcast's proposed condition 22, that would establish a specific timeframe for
4 reevaluation of AMO equipment needs, and providing that Comcast may be
5 required to provide funding.

6 CPG Condition proposed by the Department – Advance Notice Requirements

7 Q. Comcast omitted from the CPG it proposed a condition similar to paragraph 16 of
8 Mountain Cable's current CPG, issued in Docket 6101. Should the Board likewise omit
9 condition 16?

10 A. No. It should not. CPG condition 16, which requires 45 days advance notice to
11 the Clerk of the Board for any change in rates, terms or conditions of service. The
12 Department has consistently proposed, and the Board has incorporated this condition into
13 the CPGs of other cable operators. While the Board's authority to revise or suspend
14 changes in prices has largely been preempted by Federal law, this condition allows the
15 Board and Department to review proposed changes to rates, terms and conditions to
16 assure the terms are not unjustly discriminatory.

17 Another reason for incorporating this condition into Comcast's CPG is to assure
18 competitive parity between Comcast and the City of Burlington relative to the lead time
19 for, and public disclosure of, changes in rates, terms or conditions of service. The
20 Department proposed the Board apply such a condition to the cable CPG it will issue to
21 the City of Burlington. A disparity in extent of advance notice (if any) requirements

1 between Comcast and BT could create a potential competitive advantage for one operator
2 over the other. Accordingly, the Department recommends the Board adopt similar
3 requirements for both operators in this respect.

4 While the 45 days advance notice is consistent with Vermont law for tariff
5 revisions, advance notice of such a long interval may hinder the ability of cable operators
6 to respond on short notice to act upon marketing opportunities or respond to competitive
7 threats. Since consumers benefit, directly or indirectly, from such competition and
8 opportunistic promotions or rapid adaption of service offerings, consumer welfare may be
9 enhanced if this notice requirement were somehow streamlined or shortened. The preface
10 to the condition proposed by the Department (i.e, “Unless otherwise specified by state
11 law or Board administrative rule, ...”) is intended to allow for such a generic relaxation of
12 current advance notice requirements without necessitating amendments to the individual
13 CPGs issued to Comcast and other cable operators.

14 Since the Board has not yet issued a final order in that investigation, but is likely
15 to do prior to resolution of the instant investigation, the Department recommends the
16 Board apply to Comcast’s CPG whatever advance notice condition it applies to the City
17 of Burlington.

18 Competitive Neutrality – other aspects

19 Q. Do you believe that the CPG conditions the Department has proposed will put Comcast
20 and the City of Burlington’s cable businesses on a competitively-neutral footing?

1 A. The Department developed the conditions it is proposing for Comcast with that
2 requirement in mind. There is a high degree of similarity between CPG conditions
3 proposed by the Department in this docket and for BT in Docket 7044. I believe the
4 conditions proposed here, in tandem with the conditions the Department proposed apply
5 to the City of Burlington do not create an advantage or disadvantage for either operator
6 relative to the other.

7 Q. Does this conclude your direct testimony?

8 A. Yes, it does.